STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY (AMERITECH ILLINOIS) and Easton Telecom Services, LLC	)	
	)	**DOCKET NO. 02-0654**
Joint Petition for Approval of Negotiated Interconnection Agreement dated September 11, 2002 pursuant to 47 U.S.C. § 252	)	
	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY TO BRIEFS ON EXCEPTIONS

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Now comes the Staff of the Illinois Commerce Commission by their attorneys, James E. Weging, Sean R. Brady, and Matthew L. Harvey, and file this Reply to Brief on Exceptions in the above docket.

Staff agrees with the Proposed Order on the whole, and asserts that the Proposed Order remain unchanged, with exceptions as noted in its Brief on Exceptions.

1. Section 252(e) Does not Place the Burden of Proof on the State Commission

Ameritech argues that the Proposed Order has improperly placed the burden of proof on Ameritech. AI BOE at 3. Ameritech interprets Section 252(e) as placing the burden of proof upon Staff based on Ameritech's interpretation of the content and language of such section (AI BOE at 3-5). Ameritech's interpretation is incorrect. Section 252(e) does not expressly state that the burden has shifted, or has been placed upon the state commission. As the Proposed Order correctly found, in the absence of a clear statement of the burden of proof, the burden of proof remains with the proponent of the agreement. Proposed Order at 9-10.

Additionally, Ameritech is arguing a series of presumptions based on its interpretation of Section 252(e). AI BOE at 3-5 (arguing presumptions based on its interpretation of Sections 252(e)(1), (e)(2) and (e)(4)). In the absence of federal law expressly stating the procedure to be applied, state law is to be followed. Indeed, the Illinois Supreme Court has gone so far as to state that "courts have **uniformly** imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof." Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53; 416 N.E.2d 1082 (1981) (emphasis added). Since Section 252 does not expressly place the burden of proof upon the state commission, but only presents a presumption for negotiation of interconnection agreements, state law controls with respect to this issue.

Ameritech argues that the party "who claims the benefits of an exception to the prohibition of a statute" has the burden of proof. AI BOE at 5. Even if the Commission finds this to be the case, Staff would have met that burden in this case. Staff has compared the SBC11STATE plan to the Illinois Remedy Plan, it has identified those sections that are not consistent between the two plans, and those that are worse than the comparable provisions in the Illinois Remedy Plan. Therefore, Staff has shown that the SBC11STATE plan is not in the public interest. Staff has complied with the requirements of Section 252(e) in making its case. See supra §4 (outlining the requirements of Sections 252(e)).

2. The Standard of Proof is not a "Heavy One"; Section 10-15 of the Illinois APA Controls the Determination of the Burden of Proof in this Situation

Ameritech argues that the standard of proof the Proposed Order should have applied should be the same as is used by criminal courts for cases of fraud -- "clear and convincing." AI BOE at 9. The Proposed Order correctly determined that the standard of proof that Ameritech must meet is "preponderance of the evidence." Proposed Order at 10. Therefore, rather than repeating in this brief the arguments Staff made previously,, Staff reiterates it arguments set forth on pages 1-5 of its reply brief.

For the foregoing reasons the Proposed Order correctly set the standard of proof at "preponderance of the evidence."

3. The Illinois Remedy Plan is the Minimum Standard

On pages 9-10 of its BOE, Ameritech argues that since Staff has argued that the SBC11STATE plan is substantially weaker than the Illinois Remedy Plan, then "a weaker plan could still be consistent with the public interest" (AI BOE at 10), and that the Commission has not stated that the "01-0120 plan is the least stringent plan" (AI BOE at 9). Those points are interesting, but not relevant; the Proposed Order correctly determined that the Illinois Remedy Plan is the minimum standard in Illinois since the Commission essentially did so in the *Remedy Plan Order*. In Docket 01-0120, the Commission evaluated Ameritech's level of performance and established a plan to improve it. In that docket the Commission found Ameritech's performance to be substandard, and consequently approved a remedy plan that would ensure competition in Illinois would thrive and would prevent degrading service in Illinois. There are numerous findings in the Remedy Plan Order supporting this proposition:

> We agree with the CLECs that 'the remedy plan must make it more economical for Ameritech to cooperate and *provide quality service than to continue discriminating against providers to the detriment of consumers and local competition*.' The goal is to have a Remedy Plan that adequately compensates the CLECs for Ameritech's failure to meet the approved standards and *sufficiently motivates Ameritech to end any discriminatory conduct that impedes the development of competition in Illinois.*
>
> The goal of this proceeding is not only to have a Remedy Plan in Illinois that *gives Ameritech enough incentives to improve its wholesale performance*, but also to have a plan that is workable.
>
> <u>Remedy Plan Order</u> at 11-12 (emphasis added).
>
> Staff and CLECs presented ample evidence establishing that *the current {Tier 1 and Tier 2] amounts are not sufficient to provide any meaningful incentive for Ameritech to provide CLECs with service that is not substandard*.
>
> Id. at 36 (emphasis added).

> The evidence presented by the CLECs and Staff established that currently, *Ameritech provides substandard service to the CLECs often on a frequent and ongoing basis*. That evidence also established that *Ameritech does not appear to suffer any meaningful consequence as a result of delivering such service*.
>
> All of the parties find the current annual cap of 36 percent of Ameritech's net return to be acceptable. . . .
>
> [Staff] points out that *Ameritech currently does not have sufficient incentive to provide the CLECs with standard service*. Staff tenders a simple method of deterring Ameritech from further failure to deliver service – abolish the absolute ceiling for payment of remedies. . . .
>
> The Commission concurs with Staff that the monthly cap should be raised to one-sixth of the annual cap, as *the current monthly cap is simply not working to provide Ameritech with incentive sufficient for it to provide standard service to the CLECs*. . . .In so ruling, the Commission notes that Ameritech presented no evidence indicating that raising the monthly cap would harm it.
>
> Id. at 41-42.

Based on the foregoing Commission findings, it is clear that the Commission approved the Illinois Remedy Plan so that Ameritech would provide a level of wholesale service that would allow CLECs to compete, which is obviously in the public's interest. Therefore, to allow provisions that are less than what the Commission approved in the Remedy Plan Order contradicts the Commission's findings.

Furthermore, the short timeline in which the FCC allows state commissions to evaluate negotiated agreements only allows for a comparison of the negotiated agreement to current requirements of state law. See 47 U.S.C. §252(e)(3) (stating ". . . nothing in this section shall prohibit a State Commission from establishing or enforcing other requirements of State law in its review of an agreement . . ."). A detailed review of a plan's impact on the public, such as what Ameritech argues the Staff needs to prove, (see generally AI BOE) would require an analysis similar to what was done in Docket

01-0120, and that took eighteen months. <u>Remedy Plan Order</u> at 1. To require otherwise, would call for detailed comparisons of the effectiveness of every remedy plan.

Therefore, Ameritech's arguments are irrelevant, since the Illinois Remedy Plan is the only plan that this Commission has found to protect the public's interest in competition.

4. The Underlying Question of the Remedy Plan Review, as Posed By Ameritech, is Inconsistent with Federal Law

On page 11 Ameritech states, "the question is whether the 11-state plan is actually inconsistent with the public interest because it will degrade the quality of Ameritech's wholesale service." Not surprisingly, Ameritech provides no legal citation in support of its assertion that this is the pertinent question -- there is none. The question before us, and which the Proposed Order correctly determines (at 19), is found by looking at Section 252(e)(1) and (e)(3). In reviewing Sections 252(e)(1) and 252(e)(2)(ii), an interconnection agreement may be rejected by the Commission if it finds that "such agreement or portion is not consistent with the public interest" (252(e)(2)(ii)), and if the Commission is to reject an agreement to provide "written findings as to any deficiencies", (252(e)(1)). The public interest is what the Commission has ordered on wholesale remedy plans -- the Illinois Remedy Plan. Staff IB at 12; <u>infra</u> §2. Therefore, the question is whether the Ameritech and Easton have agreed to a remedy plan that is consistent with the public interest – which is the Illinois Remedy Plan; not that Staff has to prove the impossible -- the actual degradation of the telecommunications market were the SBC11STATE to be used.

Thus, the Proposed Order correctly determined that Staff only needs to prove that the proposed remedy plan is equal to or better than the Illinois Remedy Plan.

5. Comparing the SBC11STATE plan to the Illinois Remedy Plan, in the Manner Done in the Proposed Order, is not in Conflict with TA96

Ameritech argues that rejecting the Agreement "flies in the face of one of the bedrock requirements of the 1996 Act; that carriers be permitted to arrive at interconnection agreements on their own if possible, without the aid of arbitration." AI BOE at 11-12. The effect of the "bedrock requirement" Ameritech is advocating is that if the RBOC and CLEC reach an agreement, it must be approved by the Commission, regardless of state laws or service quality standards. Ameritech says that the state Commission still has the ability to protect its state laws and service quality standards, but it cloaks this position by arguing that for the state to do so, the standard of proof it must meet is "clear and convincing." There is no basis for that standard. (infra §2, Staff RB at 1-5) In fact, TA96, the FCC's approval of the SBC/Ameritech merger order and numerous 271 applications support the idea that a state can protect its intrastate service quality standards as it sees fit.

TA96 grants states the ability to protect the public, and in the wholesale market that is traditionally accomplished by setting service quality standards that are protected by a remedy plan, as acknowledged by §252(e)(3) (47 U.S.C. §252(e)(3)). In its approval of the SBC/Ameritech Merger, the FCC stated that "the [FCC's] Plan does not limit the authority of any state to adopt additional or different state performance monitoring requirements or associated remedies." (FCC Merger Order, FCC 99-279, CC Docket #98-141, Appendix C, Condition 23.

In its review of every 271 applications, the FCC has stated the following, or substantially similar to the following, in every Section 271 approval:

> "performance monitoring and enforcement mechanisms . . ., in combination with other market factors, provide strong assurance that the local market will remain open after [RBOC] receives section 271 authorization."
>
> See, New York 271 Order, ¶429. Texas 271 Order ¶420, Kansas/Oklahoma 271 Order ¶269, Massachusetts 271 Order ¶¶236-37, Connecticut 271 Order ¶76, Pennsylvania 271 Order ¶127, and Arkansas/Missouri 271 Order ¶127.[1]

The FCC therefore acknowledges that a state commission's approval of wholesale performance measures and remedy plan are crucial to ensuring that the local market remains open. In Illinois, the performance measures and remedy plan are implemented through tariffs and interconnection agreements. Remedy Plan Order at 18. Therefore, to protect the public, Ameritech has to *provide* in its interconnection agreements a remedy plan and performance measures that are equal to or better than what the Commission has approved (i.e. the Illinois Remedy Plan), and *not* just offer the Illinois Remedy Plan. To do so deprives the public of a protection that the Commission has approved for wholesale service in Illinois.

It is undeniable that Ameritech and Easton have been allowed to negotiate an interconnection agreement, however federal law, through section 252(e)(3), allows the state commission to protect its public through service quality standards and appurtenant remedy plan. See 252(e)(3). Federal law also grants state commissions the ability to protect the public interest by enforcing state laws and orders (such as Docket 01-0120)

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[1] Full cites provided in Attachment A.

that are not contradictory to the requirements of TA96; that is the hurdle that the Ameritech/Easton agreement fails to overcome.

In Docket 01-0120, the Commission has approved and set forth a remedy plan that applies to Ameritech wholesale service quality with the goal of ensuring a competitive environment in Illinois. Order, Docket 01-0120 at 4, 11-12 ("Remedy Plan Order"); Merger Order[2] at §I.2.h at 217. The *Remedy Plan Order* evaluated the Texas Remedy Plan and considered Ameritech's performance in the Fall of 2000[3]. After considering these factors, the Commission approved a wholesale remedy plan that incorporates a specific list of wholesale performance measures (hereafter "PMs"), has a level of potential liabilities to ensure that Ameritech meets the PMs standards, has a system of annual and mini-audits, an annual "soft" cap on overall payments, has a procedural trigger for a regulatory proceeding that investigates the reasons for poor performance, and allows a CLEC to pursue other forms of remedies. Remedy Plan Order at 13-16, 23-25, 27-30, 31, 35-38, 41-44. The *Remedy Plan Order* is not unlike orders issued by an administrative agency, requiring a carrier to act, or provide service, above that which is stated in the order. The Commission specifically made changes to improve the Texas Remedy Plan's effectiveness so that competition in Illinois' wholesale marketplace will grow. Merger Order, §I.2.i at 217 (stating that the Texas Plan "falls short of what we consider necessary to safeguard our ability to monitor a

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[2] Joint Application for approval of the reorganization of Illinois Bell Telephone Compnay d/b/a Ameritech Illinois, and the reorganization of Ameritech Illinois Metro, Inc. in accordance with Section 7-204 of the PUA and for all other appropriate relief, Docket 98-0555 (dated Sept.23, 1999) (hereafter "Merger Order")

[3] In effect, the *Remedy Plan Order* also took into account the impact the SBC11STATE plan had on Ameritech's performance, since Ameritech claims the SBC11STATE plan was in interconnection agreements as long as two years ago, and Docket 01-0120 analyzed Ameritech's performance in the Fall of 2000 in determining what changes to make to the Texas Remedy Plan.

thriving and dynamic competitive telecommunications market for consumers."). The Illinois Remedy Plan is intended to improve competition in the marketplace, it therefore furthers TA96, not contradicts it, since the whole purpose of TA96 is to open the market to competition.

Therefore, it is clear that comparing the SBC11STATE plan to the Illinois Remedy Plan in the manner done in the Proposed Order is not in conflict with TA96.

6. Section 10.6 of the SBC11STATE plan Defeats the Purpose of Tier 1 Payments Acting as Liquidated Damages

Ameritech argues that the Proposed Order's finding, that the liquidated damages provision in the SBC11STATE plan does not meet the requirements for such a provision since Section 10.6 acts as a cap, "is unfounded." AI BOE at 12-14. The Proposed Order's finding is correct, since the SBC11STATE plan has a cap that prevents a CLEC from properly recovering liquidated damages, wherein contrast, the Illinois Remedy Plan and *Remedy Plan Order* do not have a cap, and therefore do not prevent Tier 1 from operating as a compensatory mechanism, as determined in the Remedy Plan Order (at 37 (stating that Tier 1 payments are not liquidated damages but a "akin to contractual liquidated damages")). .

The basis of Ameritech's argument is that the cap is moot unless the $510,000 cap is exceeded. Id. at 13. The obvious response to this argument is simply that if the cap were so unlikely to be exceeded, it should be deleted from the agreement as an irrelevance. Whether Ameritech exceeds the $510,000 cap or not, however, is not the determination to be made. The question at hand is how does this monthly cap compare to the comparable provision in Illinois Remedy Plan. The *Remedy Plan Order* does not set a fixed, or "hard," cap for monthly Tier 1 payments; it is 1/6 of the annual "soft" cap[4], which is 1/6 of approximately $361 million. Remedy Plan Order at 38. As a "soft" cap, Ameritech would continue to pay beyond the cap, and therefore the Tier 1 payments continue to act as true compensatory damages. This comports with the notion of damages paid on a per occurrence basis, since the CLEC suffers the approximate dollar amount of harm per occurrence, or per violation of a PM standard.

Therefore, under this agreement, if Ameritech fails to meet a PM standard a certain number of times the CLEC would approximately suffer $510,000 in harm, and consequently Ameritech would pay $510,000 in liquidated damages as compensation for that harm. However, if Ameritech continues to miss the PM standard, then it would owe more than the $510,000, but it would not have to pay. In effect, the cap in Section 10.6 of the SBC11STATE plan does not allow the Tier 1 payments to act as true liquidated damages, whereas the "soft" cap provided in the Illinois Remedy Plan allows Tier 1 payments to be compensatory damages. Additionally, a cap would allow Ameritech to keep violating a standard but not have to make payments above the cap, and from the CLEC's perspective it is losing it right to obtain the liquidated damage amount per occurrence that is stated in the agreement as reasonable compensation for every violation in excess of the number needed to reach $510,000.

In sum, a cap harms the CLEC's ability to properly recover liquidated damages that the CLEC and Ameritech have agreed are reasonable compensation for violations of performance measures. Since the SBC11STATE plan has a cap, it prevents a CLEC from properly recovering liquidated damages, wherein contrast, the *Remedy Plan Order*

4 A "soft" cap allows the value to be exceeded.

does not have a cap and therefore does not prevent Tier 1 from operating as a compensatory damage provision. For the foregoing reasons, the Proposed Order was correct in finding that the liquidated damages provision is not consistent with the public interest.

7. Audit Provisions need to Be Clearly Stated in the Remedy Plan in the Interconnection Agreement

Ameritech argues that the Proposed Order's finding regarding annual audits is incorrect. Staff supports the Proposed Order's ultimate conclusion, however for a different reason that what is stated. The manner in which Annual Audits will be provided is inconsistent with the public interest because the requirement is not clearly provided for in this agreement. If it is not clearly provided for in the agreement then the CLEC would have no knowledge of it, and it appears as if Ameritech and the CLEC have negotiated that requirement of the *Remedy Plan Order* from the remedy plan.

When Staff reviewed this remedy plan, it found SBC11STATE remedy plan lacking an annual audit provision. Staff Exh. 2.0 at 17. If the agreement is silent on a subject, Staff assumes it is not being offered. It is not appropriate to place the burden upon Staff to assume that if something is not placed in the agreement that it has been agreed to be offered in compliance with a Commission order. That is what Ameritech is proposing. Furthermore, Ameritech is asking the Commission to accept their arguments in this docket regarding what is being offered but will not back those arguments up with the language in the agreement itself.

This issue is similar to Ameritech's claim to automatically incorporate the Tier 2 payments from the Remedy Plan Order, in that the agreement itself never identified the

Illinois Remedy Plan or explained how all of the provisions of the Illinois Remedy Plan relate to the provisions of the SBC11STATE plan. Moreover, to assume that Ameritech will make Tier 2 payments or provide Annual audits based on the Remedy Plan Order, when Ameritech excludes the remainder of the Illinois Remedy Plan provisions is incongruous. Staff addressed this same issue on pages 6 and 7 of its brief on exceptions with respect to Tier 2, and therefore reiterates the same argument as it relates to Annual Audits.

Furthermore, the Illinois Remedy Plan states that "Ameritech and the CLEC s will jointly select the third-party auditor." Remedy Plan Order at 14-15. If the Illinois Remedy Plan's annual audit provision is not provided in the SBC11STATE plan, then the CLEC lacks notice that there is an annual audit, and that it has the right to jointly select an auditor.

Additionally, since the SBC11STATE plan does not address the annual audit provision, it is unclear whether Easton's interactions with Ameritech would therefore be included in an audit that is clearly part of the Illinois Remedy Plan. For the foregoing reasons, it is unclear how Ameritech applies or incorporates the Annual Audit and Tier 2 payments into the SBC11STATE plan, yet exclude other provisions. Even if the Commission were to consider something other than the Illinois Remedy Plan (and Staff recommends that the Commission only consider plans that meet or exceed the Illinois Remedy Plan), this lack of uniformity and clarity in melding these two plans, as Ameritech suggests, into a hybrid remedy plan makes it difficult for Staff and the Commission to administer and evaluate any such remedy plan in Illinois. Therefore, the implied incorporation of the Audit provisions, as well as Tier 2 payments, into the SBC11STATE plan is not in the public interest.

Proposed Language:

Since Staff agrees with the Proposed Order's findings for alternative reasons, Staff recommends the following changes to the Commission Conclusion for Section VIII.C, as follows:

> ~~While it is probable that the annual audit conducted pursuant to the Illinois Remedy Plan will most likely encompass the same systems and processes used to produce performance results under the 11-State Plan, it is not clear whether Easton would benefit from any findings under the annual audit.~~ Because the 11-State Plan makes no mention of the annual audits under the Illinois Remedy Plan, it does not appear that Easton would benefit from an annual audit. Easton would have no notice of an annual audit existing, nor would it know that is has the right to jointly choose an auditor. Further, since the annual audit provision is not included in the agreement, it is unclear whether Easton's transactions would be included in the audit. ~~finding that Ameritech had miscalculated payments due.~~ The Commission finds that Ameritech has not justified this variation from the Illinois Remedy Plan. The audit system established in the Illinois Remedy Plan is the minimum that the Commission deems necessary to protect both CLECs' and the Commission's interests. The 11-State Plan provides no benefit to Easton from the annual audit while the "lo~~o~~ser pays" condition on the only audit available under the 11-State Plan may discourage CLECs under that plan from requesting an audit.[5] This deficiency in the 11-State Plan compromises the Commission's ability to monitor Ameritech's wholesale performance and, absent a justification by Ameritech, constitutes a material variation from the Illinois Remedy Plan audit provisions in a manner inconsistent with the public interest.
>
> Moreover, the fact that Ameritech has chosen to provide Tier 2 Payments in compliance with the Remedy Plan Order, and chosen not to provide other provisions of the Remedy Plan Order is of great concern. As decided previously, Ameritech has to provide a remedy plan that meets or exceeds the Illinois Remedy Plan/Remedy Plan Order, and, it needs to clearly set forth in the remedy plan how each provision is to operate and interrelate

[5] The Commission recognizes that the "looser pays" condition applies to mini-audits under the Illinois Remedy Plan, but also notes that the mini-audits are not the only audits available.

> with the Illinois Remedy Plan. For instance, Ameritech needs to clearly state what provisions of the Illinois Remedy Plan it is incorporating, and identify which provision of the SBC11STATE plan, or any remedy plan, is superseding which provision of the Illinois Remedy Plan. This lack of clarity makes it difficult for Staff and the Commission to administer and evaluate remedy plans in Illinois. Therefore, the implied incorporation of Tier 2 payments into the SBC11STATE plan is not in the public interest.

8. Sections 6.3 and 12.1 Provide a Three-month Waiver

Ameritech argues only one aspect of the problems with Section 6.3 and 12.1. Ameritech argues that Staff's position is that there is a three-month waiver for each agreement, however it does not address the fact that the language also provides a delay in remedy payments to CLECs for three months when the CLEC first purchases an unbundled network element, or after the introduction of a new measure. Staff IB at 29.

Further, the Proposed Order correctly found that Sections 6.3 and 12.1 lack clarity and are deficient. In support of that, Staff reiterates its arguments on pages 29 of its initial brief, and page 13 of its reply brief.

9. The Basic Premise That Wholesale Service is Protected by a Remedy Plan is an Accepted Proposition

From page 20 to 27 of its BOE, Ameritech argues that the Proposed Order erred in finding that there was a basis for finding that the potential liabilities of the SBC11STATE plan are less than those of the Illinois Remedy Plan. AI BOE at 20. Staff agrees with the Proposed Order's findings that Ameritech is attempting to relitigate the findings of the *Remedy Plan Order*. Ameritech's position is based on too high a standard of proof (AI BOE at 20-21, 23), on the premise that remedy plans do not assure a quality of performance (id. at 21), on an assertion that the Illinois Remedy Plan is the dominant remedy plan in Illinois (id. at 22), on the fact that Ameritech's own system infrastructure prevents a remedy plan from having a "significant effect" (id. at 23), and on empirical evidence of its performance in Indiana and Wisconsin (id. at 23-25).

On page 21 of its BOE, Ameritech argues that Staff has not proven that Ameritech Illinois' wholesale performance varies with the stringency of the remedy plan(s) under which Ameritech Illinois is operating. As Staff argued on pages 9-12 of its reply brief, it is a proposition accepted by the FCC and every state that has reviewed an RBOCs 271 application that a remedy plan protects wholesale service performance, and the greater the penalties, the greater the likelihood an RBOC will comply. Staff RB at 9-12.

Ameritech argues that all carriers will benefit the same regardless which remedy plan is provided. That is not necessarily true. Since 50 carriers are operating under the SBC11STATE plan, which pays lower Tier 1 payments than the Illinois Remedy Plan, the motivation to Ameritech to provide a higher overall level of service to these carriers is less than what it would be if all the carriers had remedy plans at least equal to the Illinois Remedy Plan.

Ameritech argues that the goal the Commission seeks to accomplish through a remedy plan that it has determined will allow competition to thrive (see Merger Order §1.I.2.h at 217) will only have a limited effect because Ameritech's wholesale operations are handled on a region-wide basis. AI BOE at 23. This argument essentially says that the Commission should not regulate Ameritech in Illinois because Ameritech has set up its systems on a regional basis and regulation on an individual state basis would be of limited impact. This would permit Ameritech to thwart a state commission's ability to regulate them simply by operating on a regional level and for that reason alone Ameritech's argument should be rejected. Staff also points out that Ameritech is facing similar regulation from other states in the region so it is questionable how limited the Commission's impact will be.

Ameritech also argues that its empirical evidence of its current performance proves that the SBC11STATE plan is in the public interest. AI BOE at 23. Ameritech can only make this argument if the Commission adopts Ameritech's understanding of what it means to be inconsistent with the public interest -- that the remedy plan "will degrade the quality of Ameritech's wholesale service." AI BOE at 11. As addressed above, inconsistent with the public interest is a comparison to the Illinois Remedy Plan, since that is what the Commission has ordered as a remedy plan to protect wholesale performance. Infra §3. Additionally, in Staff's reply brief, Staff explained why Ameritech's reliance on current performance in Indiana and Wisconsin is misplaced. Staff RB at 8-10.

For the foregoing reasons, the Proposed Order correctly determined that Ameritech is attempting to relitigate what has been decided in the Remedy Plan Order and that the potential liability at risk through the SBC11STATE plan is less than what is provided in the Illinois Remedy Plan.

Wherefore the Staff of the Illinois Commerce Commission ask that the exceptions of Ameritech to the proposed order in the above docket be rejected.

Respectfully submitted,

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ATTACHMENT A

Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, FCC 99-404 CC Docket 99-295 (rel. Dec. 22, 1999) (*New York 271 Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, FCC 00-238, CC Docket 00-65 (rel. June 30, 2000) (*Texas 271 Order*);

Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, FCC 01-29, CC Docket 00-217 (rel. Jan. 22, 2001) (*Kansas/Oklahoma 271 Order*), *aff'd in part*, *remanded in part sub nom. Sprint Communications Co. v. FCC*, No. 01-1076 (D.C. Cir. Dec. 28, 2001);

Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, FCC 01-0130 CC, Docket 01-9 (rel. April 16, 2001) (Mass *271 Order*)

Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut, FCC 01-208, CC Docket 01-100 (re. July 20, 2001) (CT 271 *Order*)

Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, FCC 01-269, CC Docket 01-138 (rel. Sept. 19, 2001) (*Pennsylvania 271 Order*);

In the matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region , InterLATA Services in Arkansas and Missouri, FCC 01-338, CC Docket 01-194 (rel. Nov. 16, 2001) (*Arkansas/Missouri 271 Order*).